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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,)	No. 1:22-cr-00031-DKW
)	
Plaintiff,)	
)	
v.)	DEFENDANT'S NINTH
)	MOTION IN LIMINE (TO
LINDSEY KINNEY,)	EXCLUDE EVIDENCE
)	CONCERNING NOV. 9, 2020,
<u>Defendant.</u>)	SWAT TEAM RAID)

I. Introduction and Background Facts

Mr. Kinney is charged by Superseding Indictment with posting threats on Instagram on January 17 and March 28, 2022. Docket Sub. No. 47 (Superseding Indictment). Neither of the allegedly offending Instagram posts references firearms or shooting in any way. The government has provided notice of an intent to

introduce all sorts of evidence concerning Mr. Kinney's possession of firearms and related items. *See generally*, Docket Sub. No. 60. Admissibility of such evidence generally is addressed in Mr. Kinney's second motion in limine.

The government has also noticed an intent to introduce evidence concerning a SWAT team raid of Mr. Kinney's home occurring on November 9, 2020, more than a year prior to the first charged threat herein. Docket Sub. No. 60 at 4 ¶7. According to discovery produced by the government and referenced in this notice, in late 2020 Honolulu police officers noted several social media posts depicting Mr. Kinney with various firearms and associated items. Per those officers' reports, Mr. Kinney did not have required state permits allowing him to acquire or carry firearms within the state of Hawaii.

Mr. Kinney's residence was searched as a result, pursuant to a warrant, early in the morning on November 9, 2020, by a large SWAT team. Officers entered through an open front door, deploying a flash-bang distraction device. Mr. Kinney exited his bedroom and then an officer reportedly grabbed Mr. Kinney to escort him outside. According to this officer, Mr. Kinney yanked his arm away and tried to run. Mr. Kinney was tackled and officers claim he then resisted arrest. One officer described the scene as a "deadly force situation" requiring the use of a vascular neck restraint, i.e. a blood choke hold.

Officers seized .2 grams of marijuana and related paraphernalia along with firearms, firearm accessories, and ammunition. These firearms included a pistol with no obvious make/model or serial number. Ninety-six digital photographs were taken of the scene.

Mr. Kinney was never charged with any offense concerning these seized items and eventually he took various legal efforts to have them returned. The government seeks to introduce evidence concerning these efforts as well. *See, Docket Sub. No. 60 at 4 ¶7.; citing, KINNEY_329* (documenting an April 11, 2022, call to Mr. Kinney in which he related he owned the firearms, built them himself, and would be willing to pick them up from police custody), 348-55 (including emails concluding “My hope is to have my property returned to my home . . .”, along with a list of seized items including firearms, and a Honolulu Police Department professional standards office complaint regarding the seizure). The government also seeks to introduce a February 2, 2021, Instagram post regarding the SWAT team and the “fbi some how filling their pockets with some money for giving the swat the green light.” Docket Sub. No. 60 at 2 ¶1.; *citing, KINNEY_000923* (attached hereto as Appendix A).

II. Argument

Irrelevant evidence is inadmissible pursuant to Federal Rule of Evidence 402. Federal Rule of Evidence 401 dictates that evidence is relevant if “(a) it has any tendency to make a fact more or less probable than it would be without the evidence;

and (b) the fact is of consequence in determining the action.” Fed. R. Evid. 401. Relevancy turns on the relation between the evidence and some matter properly provable in the case. Fed. R. Evid. 401, Advisory Comm. Notes. There must be some relation between the evidence and a fact that is of actual consequence in the pending action. *Id.*

Nothing about the November 2020 raid on Mr. Kinney's home is relevant to either of the pending charges. Mr. Kinney's possession of firearms is protected by the Second Amendment. Evidence concerning the extensive efforts taken by the Honolulu Police Department to search Mr. Kinney's home, arrest him, and seize his property could certainly be taken as proof of his allegedly dangerous character. Of course, such evidence is prohibited by Federal Rule of Evidence 404(b)(1).

Here, the Government has charged two highly specific threats – both to kill “by beheading.” Mr. Kinney's possession of firearms more than a year prior to either of the charged threats is protected by the Second Amendment, does not tend to prove that he intended to threaten to behead anyone, cannot be used as character evidence, and in any event its probative value, if any, is outweighed by the danger of unfair prejudice. The Honolulu Police Department SWAT team's extensive efforts to seize these items and arrest Mr. Kinney are likewise irrelevant and inadmissible.

III. Conclusion

Mr. Kinney's alleged threats speak for themselves. There is no connection

between these alleged threats of beheading and the raid on Mr. Kinney's home in November 2020. None of this evidence should not be admitted at trial.

DATED this 22nd day of November, 2022.

/s/ Cassandra Stamm
Law Offices of Cassandra Stamm, LLC

CERTIFICATE OF SERVICE

I hereby certify that on November 22, 2022, I electronically filed the foregoing Second Motion in Limine with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the Government.

/s/ Cassandra Stamm
Law Offices of Cassandra Stamm, LLC

Appendix A

